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O.A. No.417/06

ORDER DATED 25th JUNE, 2009

Coram:

Hon'ble Mr. Justice K. Thankappan, Member (J)
Hon'ble Mr. C.R. Mohapatra, Member (A)

Challenging disciplinary inquiry initiated against the applicant as per the proceedings dated 17.03.06 (Annexure-A/2) this O.A has been filed by applicant with the following prayer:-

“ ...that the Hon'ble Tribunal may be pleased to quash the order initiating departmental proceedings against the applicant dtd.17.03.2006 under Annexure-A/2 or stay the same till disposal of the Criminal case pending before the S.D.J.M., Cuttack in 2(C) C.C. No.129 of 2002;
And further be pleased to direct the respondents to pay admitted arrear dues (Pay and Subsistence allowances) pending before them;
And be further pleased to direct the Respondents to pay the applicant exemplary costs of litigation.”

2. The brief facts leading to filing of this O.A are as follows:

While working as Asst. Guard under the East Coast Railways, at Khurda road Division, a criminal case U/s 3(a) of the Railway Properties (Unauthorized Possession) Act, 1966 and F.I.R. was lodged on 21.06.02 against the applicant before the Criminal Court. This F.I.R. would show certain articles to have been seized from the applicant, who is one among the culprits in the criminal case and on the basis of the

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above, a memo of charges has been issued against the applicant on 17.03.06(Annexure-A/2) while ordering the suspension of the applicant as per Annexure-A/1 order dated 13.03.06. The Article of charge now leveled against the applicant reads as under:-

"Sri S.V. Rao, while working as Asst. Guard/KUR committed gross misconduct in that he was involved with the theft of huge quantity of parcel consignment which were seized from his Railway Quarters on 23.06.02 as per leading statement of other accused as detailed in the statement of imputation.

Thus, Sri S.V. Rao has failed to maintain absolute integrity and acted in a manner which is unbecoming of a Railway servant and rendered himself liable for disciplinary action in contravention to Rule 3.1 (i) & (iii) of R.S. Conduct Rule 1966 as amended from time to time."

3. The main thrust of the argument put forward by the Ld. Counsel for the applicant is that once the criminal case has been registered before the Trial Court and if the Trial Court continues to try, it is not legally correct in proceeding against him departmentally on the self same allegation. The applicant, in this regard relies on some of the judgements of the Hon'ble Apex Court and High Courts. The applicant mainly relies on the judgements reported in 1999 (3) SCC 679 and also in S.B.I. Vs. R.B. Sharma, reported in 99 (2005) C.L.T.-I (SC).

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4. Against the above contentions, the Department, by filing a counter has taken the stand that continuation of two proceedings i.e. Criminal and the Departmental are in accordance with law and there is no harm to continue both the proceedings concurrently or simultaneously.

5. We have heard Shri S.N. Satpathy, Ld. Counsel for the applicant and Mr. R.N. Pal, Ld. Counsel for the Respondents at length & perused the materials on record.

6. Shri Satpathy, Ld. Counsel for the applicant has urged before us that since the criminal case is under trial by the Criminal Court, it is not proper on the part of the Respondents to proceed against the applicant departmentally on the self-same ground and in the circumstances, it is only proper for this Court to stay the Departmental proceedings initiated against the applicant. The Ld. Counsel for the applicant also relied on the judgement of Hon'ble Apex Court reported in A.I.R. 1960 S.C. 806 Delhi Cloth & General Mills Ltd., V. Kushal Bhan and the judgement reported in 1999(3) S.C.C. 679. In the above two judgements, the Hon'ble Apex Court held that since the Departmental Proceedings and Criminal Case are based on identical and similar set ^{of} case and the charge in Criminal Case against the employee is of grave nature which involves complicated question of law and fact, It would be desirable to stay the Departmental Proceedings till the conclusion of the criminal case.

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7. We have considered the facts as set out in the present O.A. It reveals that the applicant is involved in a criminal case registered as 2(C) C.C. No.129 of 2002 in case No.10/02 dated 21.06.02 U/S.3(a) of the R.P. (UP) Act, 1966. Though it is the case of the applicant that no material belonging to the Railways have been seized from his custody but it has come out in evidence that articles like empty gunny bag, T. Shirts, Pants and electronic items have been seized by the investigating officer based on which charge has been filed against the applicant. At the same time, we have to see that as per Annexure-A/2 charge it is specifically stated that the applicant committed gross mis-conduct of committing theft of huge quantity of parcel consignment, which has been seized from his Railway Quarter on 23.06.02 as per leading statement of other accused, as detailed in the statement of imputation of charge. Hence, the applicant has failed to maintain absolute integrity and acted in a manner unbecoming of a Railway servant and rendered himself liable for disciplinary action ~~for~~ contravention of Rule 3.1 (i) and (iii) of Railway Servants Conduct Rules, 1966.

8. While admitting the O.A., this Tribunal had issued an interim order directing the Respondents to proceed with the disciplinary proceedings, but the final order should not be passed without the leave of the Tribunal. This interim order was issued on 10.05.06 and in the meantime, the disciplinary proceedings must have come to an end awaiting

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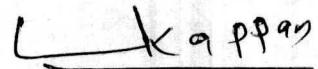
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final leave of the Tribunal for issuing final order thereon. Hence, the question of quashing the disciplinary proceedings does not arise at this distant point of time as there is no bar for continuation of disciplinary proceedings simultaneously ^{with} to that of a criminal case against the employee. In the instant case as the burden of proof are different in respective proceedings and whereas the former proceedings require to be proved beyond all reasonable doubt, the latter by preponderance of probabilities. Taking into consideration all these aspects, we are of the view that the O.A. is devoid of any merit and liable to be dismissed. However, the Respondents are at liberty to issue final order on the disciplinary proceedings, if in the meantime, it has attained finality.

9. With the above observation, the O.A. is dismissed.


(C.R. MOHAPATRA)
ADMN. MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER